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**New Jersey Department of Environmental Protection  
Proposes to Change the Freshwater Wetlands Protection Act Rules**

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The Division of Land Use Regulation of the New Jersey Department of Environmental Protection (NJDEP) has issued proposed amendments to the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A. These proposed regulations were published in the New Jersey Register dated September 4, 2007. Three public hearings were held in October and written comments were accepted by the NJDEP until November 3, 2007.

The NJDEP public notice listed the following as substantive changes to the rules:

1. Standardization of the process to create conservation easement restrictions.
2. A mitigation requirement was added to the following general permits (GP): GP2 (installation of underground utilities), GP6 (fill of non-surface water connected wetlands that are also federal waters of the United States), GP10A and 10B (minor road crossing permits), GP11 (stormwater outfall structures), GP18 (dam repair) and GP21 (above ground utility lines). In addition, the mitigation requirements for a GP23 (expansion of cranberry growing operations in the Pinelands) and GP27 (redevelopment) will be amended.
3. A new general permit will be created to accommodate non-motorized multiple use paths, especially for multi-use bicycle paths receiving State or Federal funding.
4. An archaeological review requirement will be added in cases where site is likely to have historic resources and more explicitly forbidding demolition of historic resources without an approved permit.
5. A new permit condition will be added requiring notification seven days before the commencement of construction and requiring proof that all conservation easement restrictions have been properly filed.
6. An official modification of a permit will be required when the particular permit is transferred from one owner to another and proof that all conservation easement restrictions have been filed.
7. The Department for the Wetlands Mitigation Council will now be the responsible agency for review and approval of commercial mitigation banks.
8. A formula for calculating the amount of a monetary donation if this option is chosen to satisfy the new mitigation requirement for general permits.

Some of these amendments could have a significant impact on future developments, should they be adopted. The addition of mitigation requirements to several of the more commonly used general permits will make this approval process significantly more difficult and costly. The addition of the mitigation requirements to these permits could force many developers to reduce the size of their development, due to the need to provide onsite mitigation or face the option of paying a significant amount of money into a mitigation bank or as a contribution to the Wetlands Mitigation Council.

The amended conservation easement restrictions add administrative costs to obtaining a general permit. The additional steps required after the permit is issued to verify to the NJDEP that these restrictions have been properly recorded will add a significant amount of additional work to the already onerous and time consuming permit process.

If you would like more information concerning the proposed amendments to the Freshwater Wetlands Act Protection Rules or have any other questions, please contact Russell M. Smith at 609-745-5800 x 105 or [rsmith@hvepc.com](mailto:rsmith@hvepc.com).

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